

1 **Education Cabinet**

2 **Kentucky Board of Education**

3 **Department of Education**

4 **(Amendment)**

5 **707 KAR 1:290. Free appropriate public education.**

6 RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260,
7 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 20
8 U.S.C. § 1221(e), 20 U.S.C. § 1400-1419, 34 CFR 300.1-300.662.

9 STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260,
10 and 167.015.

11 NECESSITY, CONFORMITY, AND FUNCTION: KRS 157.200 to 157.290 establish
12 the statutory framework for special education programs in local school districts. KRS
13 157.220 mandates that the Kentucky Board of Education adopt rules and administrative
14 regulations to generally carry out these programs. KRS 156.035 sets forth the authority
15 of the Kentucky Board of Education to implement any act of Congress appropriating
16 funds to the state and to provide for the proper apportionment and disbursement of these
17 funds in accordance with state and federal laws. 20 U.S.C. 1400 et.seq. and 34 C.F.R.
18 Part 300 require that policies and procedures be adopted to assure the apportionment and
19 disbursement of federal funds for exceptional children programs in accordance with
20 applicable laws. This administrative regulation establishes requirements for providing a
21 free, appropriate, public education for children identified as eligible for special education

1 services.

2 Section 1. Free appropriate public education. (1) A LEA shall make a free appropriate
3 public education (FAPE) available to all children with disabilities aged three (3) to
4 twenty-one (21) residing within its district's boundaries who have not received a high
5 school diploma, including children with disabilities who have been suspended or expelled
6 for more than ten (10) school days in a school year. FAPE shall be provided to each
7 child with a disability even though the child has not failed or been retained in a course
8 and is advancing from grade to grade based on the child's unique needs and not on the
9 child's disability. A LEA shall not be required to provide FAPE to a student who is
10 placed in an adult correctional facility if, in the educational placement prior to placement
11 in the correctional facility, the student was not identified a child with a disability and did
12 not have an IEP.

13 (2) A LEA shall be responsible for ensuring the rights and protections under 707 KAR
14 Chapter 1 are given to children with disabilities referred to or placed in private schools
15 and facilities by that LEA.

16 (3) State agencies charged with the responsibility of providing educational services to
17 children with disabilities within their care shall provide those services in accordance with
18 707 KAR Chapter 1.

19 (4) If payment for services under 707 KAR Chapter 1 is to be provided by an agency
20 other than the LEA, the LEA shall ensure the services are provided without delay even if
21 there is a delay in the payment for those services.

22 Section 2. Residential placement. If it is determined necessary by an ARC to place a
23 child with a disability for educational purposes in a private residential educational

1 program, the program, including non-medical care and room and board, shall be provided
2 by the LEA, which convened the ARC. A LEA may fulfill its responsibility under this
3 section by providing the services directly or by contracting for those services.

4 Section 3. Proper functioning of hearing aids. A LEA shall ensure that a hearing aid
5 worn in school by a child with a hearing impairment is functioning properly. A LEA
6 shall ensure that the external components of surgically implanted devices of children with
7 disabilities are functioning properly; however, a LEA shall not be responsible for the
8 post-surgical maintenance, programming, or replacement of the medical device that has
9 been surgically implanted.

10 Section 4. Program options. A LEA shall ensure that all children with disabilities have
11 available to them the variety of educational programs, services and curriculum as
12 described in the Kentucky Program of Studies, 704 KAR 3:303, that is available to
13 children without disabilities. These educational services may include art, music,
14 industrial arts, consumer and family science education, ~~and~~ career and technical
15 education and other educational services.

16 Section 5. Nonacademic services. A LEA shall take steps, including the provision of
17 supplementary aids and services as determined appropriate and necessary by the child's
18 ARC, to provide all children with disabilities the nonacademic and extracurricular
19 services and activities, which give children with disabilities an equal opportunity for
20 participation in those services and activities. These services and activities may include:

- 21 (1) counseling services;
22 (2) athletics;
23 (3) transportation;

- 1 (4) health services;
- 2 (5) recreational activities;
- 3 (6) special interest groups or clubs sponsored by the LEA;
- 4 (7) referrals to agencies that provide assistance to individuals with disabilities; and
- 5 (8) employment of students, including both employment by the LEA and assistance in
- 6 making outside employment available.

7 Section 6. Physical education. A LEA shall make available to every child with a
8 disability:

- 9 (1) physical education services, specially designed if necessary; or
- 10 (2) the opportunity to participate in the regular physical education program available to
- 11 children without disabilities unless:
 - 12 (a) the child is enrolled full time in a separate facility in which case the agency
 - 13 responsible for the education of the child in that facility shall ensure the child receives
 - 14 appropriate physical education; ~~[or]~~
 - 15 (b) the child needs specially designed physical education as prescribed in the child's IEP;
 - 16 or
 - 17 (c) the LEA enrolls children without disabilities and does not provide physical education
 - 18 to children without disabilities in the same grades.

19 Section 7. Assistive technology. (1) A LEA shall ensure that assistive technology
20 devices or assistive technology services, or both, as defined in 707 KAR 1:280 (4) or (5)
21 are made available to a child with a disability if required as part of the child's special
22 education, related services, or supplemental aids and services.

- 23 (2) On a case by case basis, the use of school-purchased assistive technology devices in a

child's home or in other settings is required if the ARC determines that the child needs access to those devices in order to receive FAPE.

Section 8. Extended school year services. A LEA shall ensure that extended school year services are available to each child with a disability, as necessary, to provide FAPE. The determination of the need for extended year services shall be made on an individual basis.

In making this determination, the LEA shall not:

(1) limit the provision of extended year services to a particular category(s) of disability;

or

(2) unilaterally limit the type, amount, or duration of those services.

Section 9. Prohibition of mandatory medication. LEA personnel shall not require a child to obtain a prescription for a substance covered by the Controlled Substance Act (21 U.S.C. 812 et.seq., including Section 202, Schedules I, II, III, IV or V) as a condition of attendance in school, receiving an evaluation under 707 KAR 1:300, or receiving services under 707 KAR Chapter 1. However, school personnel may consult or share classroom-based observations with parents or guardians regarding student's academic, functional, or behavioral performance or regarding the need for evaluation to determine eligibility for special education services.

Section 10. Records regarding migratory children with disabilities. A LEA shall cooperate with the efforts of the United States Department of Education under No Child Left Behind Act to transfer health and education records on migratory children with disabilities who move to other states.